

REMARKS

A. Claims 1-4 and 6-12 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim subject matter which applicant regards as the invention. Specifically, the Examiner states that it is unclear whether the cover film is the stabilizing film. However, the claims clearly detail the cover film being a composite film and that such comprises a stabilizing film. Furthermore, such is also detailed in Applicant's specification at, for example, page 9, lines 15-21. Therefore, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 112.

B. Claims 1-4, 6-10 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Marckardt reference, U.S. Pat. No. 3,756,386 in view of Baker et al., U.S. Pat. No. 4,341,302 and Maletz et al. (EP 1153579 82). Clarifying amendments have been made to claims 1 and 7.

Marckardt is cited for disclosing a first chamber containing a flowable substance and a second chamber where the first and second chambers are sealed in a liquid-tight manner. Furthermore, the reference is cited for disclosing a "zone 9 connecting the first and second chambers." (Office Action, p.3)

The Baker reference is cited for disclosing a plastic-foil composite structure for the cover film. Maletz et al. is cited for disclosing a weakened zone (the Examiner specifically points to Fig. 19, item 2 of Maletz). The rejection is based on the position that it would have been obvious to modify the package of Marckardt to form a cover film with a stabilising film having the weakened zone.

Independent claim 1 is not obvious over the cited art since the combination of the cited art does not disclose a stabilizing film separate from the sealing layer. Furthermore, the cited references fail to disclose a composite film comprising a sealing layer, a barrier foil and further a

stabilizing film. Admittedly, the Marckardt reference fails to disclose the composite film. Although Baker is cited for disclosing such, it fails to disclose a composite film that includes a sealing layer, barrier foil and stabilizing film.

Additionally, as detailed above, Maletz is cited for allegedly disclosing a weakened zone. Applicants respectfully disagree. The scores of Maletz are not identical to a recess. The recess is the complete removal or omission of a material in a defined zone (as seen in, for example, Fig. 1a) and is distinct from a reduced thickness or an embossed are or a score (as defined in dependent claim 6).

Further with respect to Marckardt, incorporating a material weakening of the cover film would go against the purpose disclosed therein. A material weakening of the cover film would result in the potential of the cover film rupturing during the mixing process. Thus, one of ordinary skill in the art would not consider adding a material weakening zone in the Marckardt device as the possibility of ruptures would increase.

As the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. V. Teleflex Inc.*, published October 10, 2007 state, "[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." The Examiner can not provide conclusory statements without support for his legal conclusion of obviousness. In this case, the Examiner has not clearly articulated how the cited references, in combination, disclose a composite film including a sealing layer, a barrier foil and further a stabilizing film. Furthermore, the Examiner has not shown why one skilled in the art would go against the disclosed purpose of Marckardt to add a material weakening zone that would increase the chance of ruptures during mixing.


C. Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the Marckardt, Baker and Maletz references further in

view of Peuker et al., U.S. Patent No. 6,105,761. The Peuker et al. reference was cited for disclosing dispensing packages for simplified storage, but fails to remedy the deficiencies of the primarily-cited Marckardt and secondarily-cited Baker et al. references.

The dependent claims 2-4 and 6-12 are also allowable as depending from an allowable base claim and for reciting additional features of the invention that are not disclosed or suggested in combination with the features of claim 1.

Prompt and favorable examination on the merits is requested.

Respectfully submitted,



Rajiv S. Shah
Reg. No. 56,247

Roylance, Abrams, Berdo & Goodman, L.L.P.
1300 19th Street, NW Suite 600
Washington, D.C. 20036-2680
(202) 659-9076

Dated: 11-20-08